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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,980	08/26/2003	Karl-Heinz Pitsch	WELLA-204	3076
24972	7590	06/11/2008	EXAMINER	
FULBRIGHT & JAWORSKI, LLP				DANNEMAN, PAUL
666 FIFTH AVE				
NEW YORK, NY 10103-3198				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/647,980	PITSCH, KARL-HEINZ	
	Examiner	Art Unit	
	PAUL DANNEMAN	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 April 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-8,10-20,22-27,29-34,36-39,41-46 and 48-51 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3-8,10-20,22-27,29-34,36-39,41-46 and 48-51 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 April 2008 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

Response to Amendment

1. This action is in reply to Applicant's response, filed 7 April 2008 to the first office action.
2. Claims 2, 9, 21, 28, 35, 40 and 47 are canceled.
3. Claims 1, 8, 12, 19, 27, 34, 38 and 45 are amended.
4. All the pending claims 1, 3-8, 10-20, 22-27, 29-34, 36-39, 41-46 and 48-51 have been examined.
5. Applicant has amended the drawings as requested, however Fig. 2 has a missing block (280) and Fig. 4 has a missing caption (Vending Machine in Booth Center Environment), both of which must be corrected.

Response to the Arguments

6. Applicant with respect to the rejection of Claims 1, 3, 8, 12, 13, 17, 19-20, 24, 27, 29, 34, 38-40 and 42-46 under 35 U.S.C. § 103(a) argues "**Neither Klein nor Ushikubo is directed to a product distribution system that contemplates these novel aspects of a hair care or cosmetic distribution system.**" Klein in at least Column 2, lines 5-30 discloses dispensing a custom mixed cosmetic product at a point of sale based on the customer's specific needs. The device is adapted for formulating and dispensing various cosmetic products such as permanent waving solutions, shampoos, dyes, skin lotions, etc. Therefore the Examiner maintains that the Claims are properly rejected and remain rejected.
7. Applicant with respect to the rejection of Claims 1, 3, 8, 12, 13, 17, 19-20, 24, 27, 29, 34, 38-40 and 42-46 under 35 U.S.C. § 103(a) further argues "**Ushikubo is solely concerned with validating vending machine users and simply does not concern a cosmetic product delivery system.**" Klein in at least Column 2, lines 5-30 and Column 9, lines 50-61 discloses the vending machine or dispensing device being located adjacent to a point-of-sale and delivering a custom mixed cosmetic product for sale to a customer. Applicant and Examiner are both of ordinary skill in the art; they are both knowledgeable of how custom cosmetic products are delivered at a beauty salon through the use of customer work orders (numbers). Klein has replaced the customer work order with a customer number (formulation)

which is initially determined by a salon stylist requesting the customer formulation, a vending / dispensing device and a point-of-sale. Ushikubo discloses a vending device which offers a level of security, usually implemented at a point-of-sale (sale of alcohol and other controlled substances where age is verified.) Therefore, Examiner maintains that combination of Klein and Ushikubo is proper; therefore the claims are properly rejected and remain rejected.

8. Applicant further argues "***Examiner has succumbed to the lure of prohibited hindsight reconstruction.***" The Examiner has carefully consider Applicant's application, the prior art, and the skill of one in the art and is convinced that "prohibited hindsight" has not been involved in the Examiner's prosecution of this application on its merits.

Drawings

9. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because **Fig. 2 has a missing block (280) and Fig. 4 has a missing caption (Vending Machine in Booth Center Environment)**, both of which must be corrected. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Objections

10. **Claim 30** and its dependent claim are objected to because of the following informalities: Claim 30 is dependent on canceled Claim 28. Examiner is interpreting it to be dependent on Claim 27. Appropriate correction is required.

11. **Claim 48** is objected to because of the following informalities: Claim 48 is dependent on canceled Claim 47. Examiner is interpreting it to be dependent on Claim 45. Appropriate correction is required.

Claim Rejections - 35 USC § 103

12. **Claims 1, 3-8, 10-20, 22-27, 29-34, 36-39, 41-46 and 48-51** rejected under 35 U.S.C. 103(a) as being unpatentable over Klein et al., US 5,163,010 henceforth known as Klein and further in view of Ushikubo, US 4,767,917.

13. **Examiner's note:** Examiner has pointed out particular references contained in the prior art of record in the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the **entire** reference as potentially teaching all or part of the claimed invention, as well as the content of the passage as taught by the prior art or disclosed by the Examiner.

Claims 1, 8, 12, 19, 27, 34, 38, and 45:

With regard to the limitations:

- ***A vending device for hair care or cosmetic products,***
- ***Connected to a central computer to maintain inventory data, and handle transactions,***
- ***Sales to authorized personnel.***

Klein in at least Column 1, lines 7-11 discloses a device for formulating cosmetic product and dispensing a custom mix of the active chemicals in response to a customer's criteria at a Point-of-Sale. Klein in at least Column 2, lines 5-29 further discloses a means for entering the specific input criteria based on a customer's need and a computer outputting a series of instruction sets, dispensing a product (permanent waving solutions, shampoos, dyes, skin lotions, etc.) at a point of sale. Klein in at least Column 6, lines 9-14 discloses the customer criteria are first characterized by the beauty parlor operator. Klein does not disclose inventory data per se, however Klein in at least Column 9, lines 62-67 and Column 10, lines 1-36 discloses the

computer dispensing by weight the required formulation and still further in at least Column 11, lines 37-51 making a determination that a specified amount of product remains in inventory permitting a certain number of perms to be formulated and asking whether the tanks of solution should be refilled (Fig.6a), hence it would be obvious that the computer keeps a running total of each product dispensed. Therefore, it would be obvious, at the time of invention, to one of ordinary skill that Klein's device fully encompasses the limitations of a vending device for hair care or cosmetic products, connected to a computer at a point-of-sale for handling transactions.

Klein does not specifically disclose restricting sales to authorized personnel per se, however in at least Column 6, lines 9-14 discloses the customer criteria are first characterized by the beauty parlor operator. Klein in at least Column 6, lines 39-46 further discloses a beauty parlor operator obtaining a much finer description of a client's hair at any one given time to provide more reproducible results from one permanent wave treatment to the next and still further discloses, in at least Column 9, lines 53-56 the stylist applying one of the dispensed products on the client's hair. Ushikubo, in at least Column 2, lines 45-63 discloses a vending machine wherein a sale is effected only when an authorized user using a registered which is validated. Therefore, it would be obvious, at the time of the invention, to one of ordinary skill to modify Klein with the security features of Ushikubo to insure that only properly authorized personnel dispensed hair chemicals for use on a client's hair.

Claims 4-7, 10-11, 14-16, 18, 22-23, 25-26, 30-33, 36-37, 41, and 48-51:

With regard to the limitations:

- ***Sales to authorized personnel,***
- ***Processing a payment,***
- ***Printing a receipt.***

Klein does not disclose processing a payment or printing a receipt, per se. However, Klein in at least Column 2, lines 5-8 discloses a point-of-sale and in at least Fig.1 and Column 2, lines 52-67 discloses a device representing a point-of-sale with an input means for formulating and

dispensing a cosmetic formulation as requested. Klein in at least Fig.6e and Column 12, lines 26-34 discloses an automatic printout of a client code number at the point-of-sale. Ushikubo in at least Column 5, lines 22-51 discloses the conveyance of goods, the payment for those goods and the printing of a list of the goods that were sold. Therefore, it would be obvious, at the time of the invention, to one of ordinary skill to conclude that a point-of-sale with a printer by its nature is able to process payments and print receipts. Therefore, it would be obvious, at the time of the invention, to one of ordinary skill to modify Klein with the payment features of Ushikubo to insure that goods were properly paid for, the sale was properly recorded and a receipt was supplied.

Claims 3, 13, 17, 20, 24, 29, 39, 42-44, and 46:

With regard to the limitations:

- ***Mixing formulations per input criteria (shade, hair condition, etc.),***
- ***Dispensing formulations.***

Klein in at least Fig.6f, Column 12, lines 65-67 and Column 13, lines 1-2 discloses the display of the device indicating that a formulation is being dispensed and mixed and an indication when the dispensing and mixing is completed. Klein in at least Fig.7, Column 13, lines 40-42 discloses an optional sound circuit which may be utilized during the dispensing cycle and in lines 49-55 dispensing a specific weight of the solutions into a receptacle. Klein in at least Column 14, lines 32-39 still further discloses that the device has a dispensing means for automatically dispensing said plurality of cosmetically functional mixtures sequentially from their respective container in a formulation receptacle at the point-of-sale. Therefore, it would be obvious, at the time of the invention, to one of ordinary skill to conclude that Klein's anticipates the invention's mixing and dispensing of cosmetic formulations.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL DANNEMAN whose telephone number is (571)270-1863. The examiner can normally be reached on Mon.-Thurs. 6AM-5PM Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/F. Ryan Zeender/
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3627

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Examiner, Art Unit 3627

3 June 2008

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